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Independence of judges and lawyers

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur of the Human Rights Council on the independence of judges and lawyers, Mónica Pinto, submitted in accordance with Human Rights Council resolution 26/7.

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Report of the Special Rapporteur on the independence of judges and lawyers

Summary

The Special Rapporteur of the Human Rights Council on the independence of judges and lawyers has devoted the present report, her first to the General Assembly, to the independence of lawyers and the legal profession, an issue which lies at the core of her mandate. Over the years since the establishment of the mandate in 1994, a significant number of attacks against lawyers and restrictions to the free and independent exercise of their profession have been brought to the attention of the successive Special Rapporteurs. Nevertheless, independent lawyers continue to play an essential role in democratic society.

The report presents a summary of the recent activities of the Special Rapporteur and a discussion of: (a) the fundamental role of lawyers in providing access to justice; (b) the right to have access to a lawyer; (c) the independence of the legal profession, and the role of lawyers as human rights defenders; (d) issues and safeguards relating to the non-identification of lawyers with their client's causes; (e) the privileged lawyer-client relationship; (f) freedom of expression and access to information; (g) the personal security of lawyers; (h) the guarantees that should accompany admission to the legal profession; (i) the role of bar associations; (j) legal education and training; and (k) guarantees relating to ethics and disciplinary measures. The Special Rapporteur has also submitted a list of recommendations in the closing section of the report.

I. Introduction

1. The present report is the first submitted to the General Assembly by Mónica Pinto, the Special Rapporteur of the Human Rights Council on the independence of judges and lawyers. The report is submitted in accordance with Human Rights Council resolution 26/7.

2. The issue of the independence of lawyers lies at the core of the mandate of the Special Rapporteur, which, since its establishment, has contributed to highlighting the essential role that an independent legal profession plays in a democratic society by ensuring access to justice and the protection of human rights, in particular due process of law and fair trial guarantees. Over the years since the establishment of the mandate in 1994, a significant number of attacks against lawyers and restrictions to the free and independent exercise of their profession have been brought to the attention of the successive mandate holders.

3. In the first year of her tenure, the current mandate holder recorded a significant number of alleged attacks against lawyers and instances of interference with or restrictions to the free exercise of their profession through the communication procedure. Between 1 August 2015 and 31 July 2016, she sent a total of 83 urgent appeals and allegation letters to Governments in all parts of the world, 28 per cent of which addressed instances of attacks against the independence of lawyers and violations of their rights, including threats, attacks, detention, prosecution, disbarment and killings.[1] Furthermore, 74 per cent of the communications dealt with alleged violations of the right to due process of law and to a fair trial, most of them in the context of arrests and detentions. The lack of access to a lawyer, including to a lawyer of one's choice, was mentioned in 47 per cent of the letters sent.

4. For this reason, the Special Rapporteur decided to devote the present report to the independence of lawyers and the legal profession. In this regard, she acknowledges the importance and relevance of the reports of former Special Rapporteurs on the independence of judges and lawyers, Leandro Despouy (A/64/181) and Gabriela Knaul (A/HRC/23/43).

5. In addition to the detailed analysis of the communications sent over the course of one year, the report is based on an extensive review of: (a) all communications concerning lawyers since 2010; (b) country visits carried out by the mandate holders since 2009; (c) responses to an online questionnaire[2] prepared by the International Bar Association's Human Rights Institute; and (d) the contributions of bar associations and non-governmental organizations that monitor and respond to attacks on lawyers.

6. The Special Rapporteur wishes to convey her sincere gratitude to all the lawyers and organizations who contributed to the preparation of the present report by sharing their views and concerns on the situation of the legal profession. In

[1] This number only represents the "tip of the iceberg" since the vast majority of cases are not routinely brought to the attention of the Special Rapporteur. For instance, the European Bar Human Rights Institute recorded 200 lawyers persecuted in the world in 2015, including 100 killed (see www.idhae.org/idhae-uk-index1.htm).

[2] The questionnaire was circulated to the legal community and available on both the Special Rapporteur's and the website of the International Bar Association's Human Rights Institute (110 replies covering 61 countries were received).

particular, she wishes to convey her appreciation to the International Bar Association's Human Rights Institute, the Human Rights House Network, the International Commission of Jurists, the Lawyers for Lawyers foundation, the Center for Justice and International Law and the European Human Rights Advocacy Centre.

II. Activities since March 2016

7. The activities carried out by the Special Rapporteur from 1 August 2015 to 15 March 2016 are listed in the report submitted to the thirty-second session of the Human Rights Council (A/HRC/32/34). Since that time, she has participated in the activities set out below.

8. The Special Rapporteur took part in a regional consultation to enhance cooperation between the United Nations and regional human rights mechanisms of the Americas, held in Washington, D.C., on 9 April 2016, organized by the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

9. From 29 April to 7 May 2016, the Special Rapporteur carried out an official visit to Sri Lanka, jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The report on that visit will be presented at the thirty-fifth session of the Human Rights Council.

10. On 6 and 7 June 2016, the Special Rapporteur participated in two panels on justice organized by the Konrad Adenauer Foundation in Argentina and Uruguay, respectively, together with judges, academics and members of civil society of both countries, following which she participated in the annual meeting of special procedures mandate holders, held in Geneva from 6 to 10 June 2016.

11. On 11 and 12 June 2016, the Special Rapporteur chaired an expert group meeting organized by the Human Rights House Network and the Lawyers Committee for Human Rights in Belgrade. The event, which was attended by more than 40 lawyers and legal professionals from Eastern Europe, the Caucasus and Central Asia, as well as by representatives of international and regional legal organizations, examined the situation of lawyers and the legal profession in their respective regions.

12. On 14 June 2016, the Special Rapporteur took part as a panellist in a side event at the thirty-second session of the Human Rights Council, entitled "Who judges the judges? Accountability for judicial corruption and judicial complicity", which was organized by the International Commission of Jurists and the International Bar Association.

13. On 15 June 2016, the Special Rapporteur held an open informal consultation with representatives of civil society, including associations of legal professionals, to discuss issues related to the independence of lawyers and the legal profession.

14. Also on 15 June 2016, the Special Rapporteur presented her first annual thematic report to the thirty-second session of the Human Rights Council (A/HRC/32/34). In her report, she introduced her approach and ideas for the mandate and provided preliminary information on her project to develop judicial

indicators. She also presented the report of her official country visit to Guinea-Bissau (A/HRC/32/34/Add.1).

III. Protecting the independence of lawyers and the legal profession

A. Introduction

15. An effective system for the administration of justice presupposes not only an independent and impartial judiciary, but also an independent legal profession. Lawyers play an essential role in ensuring access to justice. They facilitate the interaction between natural and juridical persons and the judiciary by providing legal advice to their clients and representing them before adjudicatory bodies. Without the assistance of a lawyer, the right to a fair trial and the right to an effective remedy would be irremediably compromised. Moreover, the general practice of providing independent and impartial justice is accepted by States as a matter of law and constitutes, therefore, an international custom in the sense of article 38 (1) (b) of the Statute of the International Court of Justice (E/CN.4/1995/39, para. 35).

B. The right to justice

1. The right of access to justice

16. On 25 September 2015, the States Members of the United Nations acknowledged the centrality of the right to access to justice when they committed themselves to "provide access to justice for all" by adopting Sustainable Development Goal 16 of the 2030 Agenda for Sustainable Development. This political engagement commits the 193 Member States to work positively towards this goal. Lawyers play a critical role in ensuring the exercise of the right to access to justice and the realization of the right to a fair trial.

17. Several international and regional human rights instruments list the right to receive free legal assistance among the essential legal guarantees of all persons charged with a criminal offence.[3] The aim of legal aid is to contribute to the elimination of obstacles and barriers that impair or restrict access to justice by providing assistance to people otherwise unable to afford legal representation and access the court system.

18. In her 2013 report to the Human Rights Council, the previous Special Rapporteur noted that "the right to legal aid can be construed as both a right and an essential procedural guarantee for the effective exercise of other human rights", and that it should therefore be recognized, guaranteed and promoted in both criminal and non-criminal cases (A/HRC/23/43, para. 28).

[3] See for instance: United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, (resolution/67/187, annex).

2. The right of access to a lawyer

19. The right of access to a lawyer is firmly established in international law. It is a right in itself and an essential precondition for the exercise and enjoyment of a number of other rights, including the right to liberty and security of person, the right to a fair trial and the right to an effective remedy. Access to legal advice and assistance is also an important safeguard that helps to ensure fairness and public trust in the administration of justice.

20. Several international and regional human rights treaties include the right to be assisted by a lawyer of one's own choosing among the minimum guarantees due to every person charged with a criminal offence. Article 14(3) of the International Covenant on Civil and Political Rights lists, among the procedural guarantees available to the accused person, the right "to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing" and the right "to defend himself in person or through legal assistance of his own choosing". Other international and regional human rights treaties include references to the right of access to a lawyer of one's own choosing.[4]

21. This right has also been proclaimed in a large number of United Nations legal instruments, including the Safeguards guaranteeing protection of the rights of those facing the death penalty,[5] the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,[6] the United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("the Havana Rules"),[7] the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"),[8] the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Persons Deprived of Their Liberty to Bring Proceedings Before a Court,[9] and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).[10]

22. The Basic Principles on the Role of Lawyers[11] represent the most comprehensive international normative framework aimed at safeguarding the right of access to legal assistance and the independent functioning of the legal profession. The Principles provide that all persons "are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings". They also list the measures that Member States should adopt to ensure access to lawyers and legal services, including "the provision of sufficient funding and other resources for legal services to the poor and, as

[4] See: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 18(3)(b) and (d); Convention on the Rights of the Child, articles 37(d) and 40(2)(b); European Convention on Human Rights, article 6 (3)(b) and (c); Charter of Fundamental Rights of the European Union, articles 47 and 48; American Convention on Human Rights, articles 8(2)(c), (d) and (e), and 25; African Charter on Human and Peoples' Rights, article 7(1)(c); and Arab Charter on Human Rights, article 16(4).

[5] Economic and Social Council resolution 1984/50, annex.

[6] Resolution 43/173, annex.

[7] Resolution 45/113, annex.

[8] Resolution 40/33, annex.

[9] A/HRC/30/37, annex.

[10] Resolution 70/175, annex.

[11] See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect B.

necessary, to other disadvantaged persons" (Principle 3), as well as the promotion of programmes "to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms" (Principle 4).

23. The Basic Principles include a number of provisions to ensure prompt and effective access to a legal counsel in criminal matters. They require States to adopt appropriate measures to ensure that "all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence" (Principle 5) and that any such persons who do not have a lawyer are provided with "a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services" (Principle 6).

24. At the regional level, in October 2000, the Committee of Ministers of the Council of Europe issued recommendation R(2000)21 "on the freedom of exercise of the profession of lawyer", which sets out the general principles to be followed to promote freedom to exercise this profession. The directive on the right of access to a lawyer in criminal proceedings, adopted by the European Parliament and the Council of the European Union, lays down minimum rules concerning the right of access to a lawyer in criminal proceedings, the right to have a third party informed upon deprivation of liberty and the right to communicate with third persons and with consular authorities while deprived of liberty.

25. The Basic Principles provide that all persons arrested or detained, with or without criminal charge, shall have "prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention" (principle 7). In its general comment No. 32, the Human Rights Committee stated that the right to communicate with counsel set out in article 14(3) (b) of the International Covenant on Civil and Political Rights requires that the accused be granted "prompt access to counsel" (CCPR/C/GC/32, para. 34).

26. Regional human rights courts have also considered prompt access to a lawyer as a precondition for the effective realization of the right to a fair trial. Testimony elicited in the absence of a lawyer is inevitably a less than satisfactory basis for conviction. For example, in *Salduz v. Turkey*,[12] the European Court of Human Rights found that the right to a fair trial under article 6 of the European Convention on Human Rights could not be considered practical and effective without access to a lawyer from the first interrogation. The presence (or absence) of counsel may also be a decisive factor at other stages of the criminal process. In the case of *Lebedev v. Russia*,[13] the Court found a violation of article 5 (3) of the European Convention, which provides for a right to be brought promptly before a judge to have the legality of one's detention determined. Even though there is no explicit mention of a right to legal assistance in article 5, the violation was based on the fact that exclusion of Mr. Lebedev's lawyers from the initial detention hearing was unjust in the circumstances of the case.

27. Prompt access to a lawyer also represents an important safeguard against arbitrary arrest or detention and unlawful deprivation of liberty, which are prohibited under article 9 (1) of the International Covenant on Civil and Political

[12] European Court of Human Rights, judgment of 27 November 2008.

[13] European Court of Human Rights, judgment of 25 October 2007.

Rights and other corresponding international and regional legal provisions. The chances of arbitrariness are higher when the detainee has no counsel to assess the legality and/or reasonableness of his or her detention.

28. Access to a lawyer from the very onset of deprivation of liberty also represents an important safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. Articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 39/46, annex) require States parties to take all appropriate measures to prevent torture and other forms of ill-treatment or punishment.

29. In its general comment No. 20 (para. 11),[14] the Human Rights Committee recognized that the effective protection of detainees from all forms of ill-treatment requires that prompt and regular access be given to lawyers. In general comment No. 2, the Committee against Torture included the right promptly to receive independent legal assistance among the basic guarantees that apply to all persons deprived of their liberty (CAT/C/GC/2, para. 13). The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment has also observed that the presence of a lawyer during police questioning "may not only deter the police from resorting to ill-treatment or other abuses, but may also work as a protection for police officers in case they face unfounded allegations of ill-treatment" (CAT/OP/MDV/1, para. 62).

3. Independence of the legal profession

30. In the preamble of the Basic Principles it is stipulated that adequate protection of the human rights and fundamental freedoms requires "that all persons have effective access to legal services provided by an independent legal profession". According to Principles 12 to 15, lawyers should at all times maintain "the honour and dignity of their profession as essential agents of the administration of justice". They should be honest and loyal to their clients, advise them as to their legal rights and obligations, take legal action to protect their clients' interests and assist them before courts, tribunals or administrative authorities. In protecting the rights of their clients, lawyers should promote the cause of justice, seek to uphold human rights and fundamental freedoms, and "at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession".

31. Lawyers should be guaranteed independence from State authorities and non-State actors, which may also put them at risk. While States are under the duty to protect lawyers from undue interference from authorities, they should also remove third party's obstacles to the independence of lawyers.

32. The Basic Principles also stipulate that lawyers have to commit to the independence of their profession and recognize the central role they play in the justice system. Lawyers are not expected to be independent or impartial in same way as a judge, but they should nonetheless be free from any external pressure and interference, especially such as may arise from their personal interests.[15] The

[14] See http://hrlibrary.umn.edu/gencomm/hrcom20.htm.

[15] In its general comment No. 32, the Human Rights Committee stated that "lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter" (CCPR/C/GC/32, para. 34).

independence of lawyers is as necessary to ensuring trust in the process of justice as is the impartiality of judges. Lawyers should use their knowledge to represent and defend their clients, in accordance with professional codes of conduct , avoid any impairment of their independence and be careful not to compromise their professional standards to please their clients, the court or third parties. Their honesty and intellectual and material integrity are crucial in order to ensure that their clients have confidence in them, and also to ensure the trust of society in the legal profession as a whole. Lawyers should be perceived as honest and independent both by their clients and by society at large.

33. The best guarantee of such independence is a self-governing body, understood as an organization independent from the State or other national institutions. The Special Rapporteur has repeatedly highlighted the importance of independent and self-regulating bar associations to oversee the process of admitting candidates to the bar, provide for uniform codes of ethics and conduct and enforce disciplinary measures, including disbarment (see paras. 80-88 below).

4. Lawyers as human rights defenders

34. Lawyers constitute a professional group whose work is often closely related to the promotion and protection of human rights. Their instrumental role in the promotion and protection of human rights is recognized in the preamble of the Basic Principles, which stipulates that adequate protection of human rights and fundamental freedoms requires that all persons have "effective access to legal services provided by an independent legal profession".

35. When acting on behalf of their clients in defending their human rights and fundamental freedoms, lawyers should also be regarded as human rights defenders, and in that role they should fall under the protective scope of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.[16]

36. The most identifiable human rights defenders are those whose daily work specifically involves the promotion and protection of human rights, a category that includes human rights lawyers. However, not all lawyers can automatically be regarded as human rights defenders simply by virtue of their professional affiliation. Rather, when lawyers provide professional services aimed at promoting the human rights and fundamental freedoms of their clients, they qualify as human rights defenders.

37. The Declaration on Human Rights Defenders contains a number of provisions that protect lawyers whenever they provide professional assistance to individuals or groups claiming their rights before national authorities or seeking redress for human rights violations perpetrated by State officials. Article 9(3)(c) of the Declaration refers directly to lawyers and other legal professionals, and recognizes the right "to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms".

38. According to the Inter-American Court of Human Rights, "States have the obligation to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to

[16] Resolution 53/144, annex.

avoid any attempts on their life or safety; to refrain from imposing restrictions that would hinder the performance of their work, and to conduct a serious and effective investigation of any violations perpetrated against them, thereby combating impunity".[17]

C. Safeguards for the professional functions of lawyers and their security

39. The Basic Principles list a number of safeguards that States must put in place in order to guarantee the independence of the legal profession and the liberty and security of lawyers. Such safeguards aim at enabling lawyers to carry out their professional functions independently and without fear for their physical and mental integrity. This section analyses the nature and content of these safeguards and identifies the most common forms of attacks or threats to the independence, safety and security of legal professionals.

40. While in a good number of countries the de jure independence of the legal profession is protected under the domestic legal framework, the Special Rapporteur remains concerned about the many States where the independence of lawyers is not fully protected in law, or where domestic legal guarantees are not adequately implemented and enforced. Domestic guarantees for the independence of the legal profession are also often curtailed by other laws, such as counter-terrorism or surveillance laws.

1. Principle of non-identification

41. The Basic Principles provide that lawyers "shall not be identified with their clients or their clients' causes as a result of discharging their functions" (Principle 18). This safeguard, which underpins the principle of independence of the legal profession, aims at enabling lawyers to perform their professional duties freely, independently and without any fear of reprisal. In addition, the provision indirectly contributes to ensuring the effective realization of the right to defence. In fact, the identification of a lawyer with his/her client could prevent or limit access to a legal counsel for those individuals who are accused of particularly heinous crimes.

42. In the exercise of their duty to defend their clients against any unlawful action, lawyers are too often identified by governmental and other State bodies, and even sometimes by the general public, with the interests and activities of their clients (A/64/181, para. 12). Attacks on lawyers are frequently the direct consequence of the identification of lawyers with their clients or their clients' interests, and open the door to undue interference with lawyer's professional functions and/or violations of his/her human rights.

43. Cases brought to the attention of the Special Rapporteur show that lawyers have suffered disbarment, attacks on their physical integrity and reputation, arbitrary detention, prosecution and other sanctions as a result of their identification with the client and/or the cause that they have committed themselves to defend and represent before the judicial authorities. Although rare, these attacks occur even in countries where lawyers, as a category, are generally not a risk.

[17] See Case of *Lysias Fleury et al v. Haiti*, judgment of 23 November 2011, Series C, No. 236, para. 100 (available from: http://www.corteidh.or.cr/docs/casos/articulos/seriec_236_ing.pdf).

44. Lawyers who represent and defend people who are accused under counter-terrorism laws are commonly stigmatized both by authorities and the general public, or may subjected to defamatory remarks in the media and social networks. In a case brought to the attention of the mandate holder where lawyers had been subject to detention and criminal investigations for having received messages from clients suspected or convicted of terrorist activities, the Special Rapporteur's predecessor emphasized that "such actions on the part of law enforcement agencies and the judiciary may create a chilling climate in which lawyers may eventually refuse to represent clients connected to politically sensitive issues out of fear of becoming the target of judicial harassment or criminal charges, thus severely compromising the universal right to legal representation".[18]

2. Privileged lawyer-client relationship

Confidentiality

45. The Basic Principles provide that the right of access to a lawyer for all arrested, detained or imprisoned persons shall be granted without "interception or censorship and in full confidentiality" and that consultations with a lawyer "may be within sight, but not within the hearing, of law enforcement officials" (Principle 8). In its general comment No. 32, the Human Rights Committee referred to the right of counsel to meet clients in private and to communicate with them in conditions that fully respect the principle of confidentiality (CCPR/C/GC/32, para. 34).

46. The principle of confidentiality refers to all types of communications between lawyer and client. This principle also protects lawyers and their clients from illegal search and seizure of physical and electronic documents. E-mails, text messages and other electronic means of communication between lawyer and client are confidential and should be preserved from undue interference. In some cases that were brought to the Special Rapporteur's attention, lawyers had been subject to wiretapping of their telephone conversations and interception of e-mails and electronic exchanges of information. Moreover, as noted by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, "communications surveillance should be regarded as a highly intrusive act that potentially interferes with the rights to freedom of expression and privacy and threatens the foundations of a democratic society. Legislation must stipulate that State surveillance of communications must only occur under the most exceptional circumstances and exclusively under the supervision of an independent judicial authority".[19]

47. One of the most common violations of the principle of confidentiality is the monitoring of consultations between lawyers and their clients that take place at detention facilities. In a number of communications, the Special Rapporteur expressed concern that consultations between the defendants and their legal representatives had allegedly taken place in the presence of State security officials, and that opportunities for the defendants to give instructions to their legal team had been severely restricted due to the presence of security officials physically separating the defendants from their lawyers.[20] In other cases, lawyers defending

[18] Case No. TUR 1/2013 (see https://spdb.ohchr.org/hrdb/23rd/public_-_UA_Turkey_15.03.13_(1.2013).pdf); see also A/HRC/24/21, case No. TUR 1/2013.

[19] A/HRC/23/40, para. 81.

[20] See https://spdb.ohchr.org/hrdb/24th/public_-_UA_UAE_16.04.13_(1.2013).pdf, case No. ARE 1/2013; see also A/HRC/24/21, Case No. ARE 1/2013.

political prisoners had allegedly been harassed and illegally searched, and had their documents, cell phones and other electronic devices carefully scrutinized by prison authorities prior to their meeting with clients in detention facilities.

48. Furthermore, a lawyer's place of work and personal residence should also be fully protected from undue search and seizure. Some cases brought to the Special Rapporteur's attention related to alleged raids or arbitrary searches carried out by State authorities or unidentified individuals to seize documents and files from a lawyer's private or professional premises.

49. The jurisprudence of the European Court of Human Rights has sought to guarantee the protection of the lawyer-client privilege through the right of respect for private and family life, set out in article 8 of the European Convention on Human Rights. In the case of *Niemietz v. Germany*, the Court found a raid on lawyer's offices by the tax authorities aimed at discovering incriminating evidence against one of his clients to be in breach of article 8 of the Convention. It observed that there appeared to be "no reason of principle why this understanding of the notion of 'private life' should be taken to exclude activities of a professional or business nature since it is, after all, in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity of developing relationships with the outside world".[21]

Access to clients

50. Principle 16 (b) of the Basic Principles requires States to ensure that lawyers are able "to consult with their clients freely both within their own country and abroad". Freedom of movement, set out in article 12(1) of the International Covenant on Civil and Political Rights, also plays a pivotal role in guaranteeing lawyer's access to their clients. The undue interference with a lawyer's freedom of movement can adversely impact their ability to consult their clients, to appear before courts and to travel to meetings and events, thus hindering the effective discharge of their professional functions. In some countries, travel bans — sometimes followed by detentions — make it practically impossible for lawyers to carry out their work.

51. Access to clients is particularly important in the context of detained clients since their freedom of movement is confined within State-controlled facilities. The Basic Principles provide that all arrested, detained or imprisoned persons "shall have prompt access to a lawyer" (Principle 7) and "be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer" (Principle 8) (see paras. 25, 29 and 47 above). This requires State authorities to exercise control over such detention centres in a manner that enables lawyers to access their clients without delays and unnecessary burdens, and to guarantee physical spaces that allow for privacy and confidentiality.

52. The Special Rapporteur has dealt with the issue of lawyer's access to clients on a number of occasions. For example, the former Special Rapporteur noted the difficulties that lawyers faced in gaining access to their clients owing to restrictions

[21] See judgment of 16 December 1992, para. 29 (available from: http://adapt.it/adapt-indice-a-z/european-court-human-rights-case-niemietz-vs-germany-16-december-1992); see also *Petri Sallinen and others v. Finland*, judgment of 27 September 2005, para. 92 (available from: http://hudoc.echr.coe.int/ENG?i=001-70283#{"itemid":["001-70283"]}).

introduced pursuant to the Turkish anti-terrorism legislation, which limited the number of lawyers who could assist individuals charged under the anti-terrorism legislation and delayed contact with clients suspected of terrorist activities (A/HRC/20/19/Add.3, para. 49). Other violations of the right of access to clients brought to the Special Rapporteur's attention include delayed access to clients, lack of appropriate facilities for private consultation and communication with clients, presence of prison officials during meetings with clients and arbitrary intervention of State authorities, including prison officials, to deny or restrict lawyers' visits to their clients.

53. Since States are bound by their international human rights obligations, the right of lawyers to communicate with their clients also includes instances where they may represent clients before international and regional human rights courts and bodies. Even if they are not members of their national bar association, lawyers engaging in such representation should be awarded the same guarantees and protection due to lawyers litigating in local tribunals.

3. Freedom of opinion and expression and access to information

54. Freedom of opinion and expression are enshrined in many international and regional human rights instruments, and form a basis for the full enjoyment of a wide range of other human rights, including the rights to freedom of assembly and association, and the exercise of the right to vote. The Basic Principles recognize that lawyers are entitled, like all other individuals, "to freedom of expression, belief, association and assembly" (Principle 23).[22] The Basic Principles also specify that lawyers have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. Principle 23 points out that these rights are not absolute, and that lawyers should always conduct themselves "in accordance with the law and the recognized standards and ethics of the legal profession".

55. Freedom of expression and association have specific importance in the case of persons involved in the administration of justice. They constitute essential requirements for the proper and independent functioning of the legal profession, since lawyers use written and oral communication as a fundamental professional tool. For this reason, the Basic Principles state that lawyers should enjoy "civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority" (Principle 20). Other activities not directly related to the defence of clients or clients' causes, such as academic research and participation in legislative drafting processes, should likewise be protected from undue limitations or censorship.

56. Article 19(3) of the International Covenant on Civil and Political Rights lays down the specific conditions under which restrictions to the right to freedom of expression are permitted: the restrictions must be "provided by law", they may only be imposed for one of the grounds set out in subparagraphs 3 (a) and (b) of article 19, and they must conform to the strict tests of necessity and proportionality. In its

[22] When engaging in activities aimed at the protection and promotion of human rights, the right of freedom of expression of lawyers is also protected under article 6 of the Declaration on Human Rights Defenders.

general comment No. 34, the Human Rights Committee stressed that restrictions must be applied only for those purposes for which they were prescribed, and should in no case put in jeopardy the right itself (CCPR/C/GC/34, paras. 21 and 22).

57. In the exercise of her mandate, the Special Rapporteur and her predecessors have received a number of communications alleging violations of the right of lawyers to freedom of opinion and expression. In many instances, lawyers were targeted for expressing criticism and discontent with the authorities of their countries, as well as for denouncing impunity, inside and outside the courtroom. In some cases, these communications showed that criminal legislation had been used as a means to limit the right to freedom of expression of lawyers. In other cases, lawyers have been subjected to death threats, harassment and surveillance as a result of the opinions expressed in the legitimate exercise of their functions.

Contempt of court

58. Contempt of court manifests itself in a behaviour that wilfully disregards or disrespects the authority of a judge or a court of law. In common law jurisdictions, criticism of a judge or court may be punished if it "scandalizes the court". The aim of contempt of court proceedings is to prevent the undermining of public confidence in the administration of justice.[23]

59. Misuse of contempt of court charges raises serious concern in relation to the exercise of freedom of expression by lawyers. Although contempt of court represents an important mechanism for preserving the authority and dignity of judges and courts, its use for restricting the ability of lawyers to give their opinions on decisions taken by judicial authorities is particularly troublesome. In the past, the mandate of the Special Rapporteur has witnessed cases where contempt of court has been used by chief justices to impose sanctions on lawyers *inaudita altera parte*.[24] The Special Rapporteur is of the view that contempt of court should only be used to prevent interference with the administration of justice, not as a tool to hinder criticism of judicial organs in a democratic context. She also considers that legislation should be enacted to define a clear and precise scope for the offence of contempt of court, identifying behaviours constituting contempt of the court and setting up a procedure to deal with such cases.

60. At the regional level, the European Court of Human Rights has issued several judgements on the relationship between freedom of expression and the offence of contempt to court.[25] Such decisions also contribute to clarification of the content of freedom of expression in the context of the exercise of the legal profession, as well as the rights and duties of lawyers as actors in the justice system.

61. In the case of *Schöpfer v. Switzerland*, the European Court of Human Rights acknowledged that in the exercise of their right to freedom of expression, "lawyers

[23] See *Background Paper on Freedom of Expression and Contempt of Court*, available at https://www.article19.org/data/files/pdfs/publications/foe-and-contempt-of-court.pdf.

[24] Definition: not in the presence of the other or opposing party. The phrase is often used as a procedural expression, as when a prosecution brings proceedings *inaudita altera parte* against an unavailable criminal defendant.

[25] See: *Schöpfer v. Switzerland* (20 May 1998), *Nikula v. Finland* (21 March 2002), *Kyprianou v. Cyprus* (15 December 2005), *Veraart v. The Netherlands* (30 November 2006), *Morice v. France* (23 April 2015), and *Rodriguez Ravelo v. Spain* (12 January 2016) (available from: http://www.echr.coe.int/Pages/home.aspx?p=home).

are certainly entitled to comment in public on the administration of justice, but their criticism must not overstep certain bounds".[26] In *Kyprianou v. Cyprus*, the European Court considered that the penalty of five days' imprisonment inflicted on the lawyer for contempt of court "was disproportionately severe on the applicant and was capable of having a 'chilling effect' on the performance by lawyers of their duties as defence counsel". The judges therefore concluded that the national court had failed to strike the right balance between the need to protect the authority of the judiciary and the need to protect the applicant's right to freedom of expression.[27]

Access to information

62. Article 19(2) of the International Covenant on Civil and Political Rights also embraces a right of access to information held by public authorities. In its general comment No. 34, the Human Rights Committee noted that such information includes "records held by a public body, regardless of the form in which the information is stored, its source and the date of production" (CCPR/C/GC/34, para. 18).

63. To enable lawyers to provide effective legal assistance to their clients, the Basic Principles require competent authorities to adopt all appropriate measures to ensure that lawyers have "access to appropriate information, files and documents in their possession or control in sufficient time" (Principle 21). In its general comment No. 32, the Human Rights Committee interpreted the right of the accused person "to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing" enshrined in article 14(3)(b) of the International Covenant on Civil and Political Rights as including "access to documents and other evidence," as well as "all materials that the prosecution plans to offer in court against the accused or that are exculpatory" (CCPR/C/GC/32, para. 33).

64. Under the mandate, the Special Rapporteur has addressed the issue of access to client's information on a number of occasions. In a report on a mission to a Member State, the previous Special Rapporteur expressed concern at the serious difficulties faced by lawyers in accessing information, especially investigation files, and recommended that lawyers be guaranteed, both in law and in practice, full access to appropriate information, files and documents in the possession or control of the authorities (A/HRC/29/26/Add.2, paras. 57 and 112). She drew similar conclusions in another report on a country visit, in which she recommended that lawyers' full access to appropriate information, files and documents in the possession or control of the authorities be guaranteed from the onset of the investigation in order to allow for the preparation of an adequate defence in conformity with the principle of equality of arms (A/HRC/29/26/Add.1, para. 59).

4. Personal security of lawyers

65. The Basic Principles require States to adopt all appropriate measures to ensure that lawyers are able to perform all of their professional functions "without intimidation, hindrance, harassment or improper interference". Where the security

[26] Judgment of 20 May 1998, para. 33 (see http://www.hrcr.org/safrica/expression/schopfer_switzerland.html).

[27] Judgment of 15 December 2005, para. 181 (see https://wcd.coe.int/ViewDoc.jsp?p=&id=948495&Site=COE&direct=true).

of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities (Principles 16 (a) and 17).

66. These principles are an emanation of the right to liberty and security of person, enshrined, inter alia, in article 9 of the International Covenant on Civil and Political Rights. As the Human Rights Committee pointed out in its general comment No. 35, "liberty of person concerns freedom from confinement of the body, not a general freedom of action", while "security of person concerns freedom from injury to the body and the mind, or bodily and mental integrity" (CCPR/C/GC/35, para. 3). Article 9 of the International Covenant guarantees those rights to everyone.

67. The right to liberty of person is not absolute. Article 9 of the International Covenant on Civil and Political Rights recognizes that sometimes deprivation of liberty is justified, for example, in the enforcement of criminal laws. Article 9(1) provides that deprivation of liberty must not be arbitrary, and must be carried out with respect for the rule of law. The second sentence of paragraph 1 prohibits arbitrary arrest and detention, while the third sentence prohibits unlawful deprivation of liberty, that is, deprivation of liberty that is not imposed on such grounds and in accordance with such procedure as are established by law (CCPR/C/GC/35, paras. 10 and 11).

68. Arbitrary deprivation of liberty is the most commonly reported type of attack on lawyers received by the Special Rapporteur. Deprivation of liberty aims to prevent lawyers from fulfilling their professional functions or, more commonly, is used as a reprisal for the discharge of their professional duties. The detention of lawyers for both purposes constitutes an egregious violation of the right to liberty of person.

69. Since the establishment of the mandate, the Special Rapporteur has considered a large number of cases where lawyers have been subjected to arbitrary arrest and detention as a result of the legitimate exercise of the legal profession.[28] Where attacks on the liberty of lawyers are frequent or systematic, they may undoubtedly have a chilling effect on the whole category of legal practitioners.

70. The right to security of person protects individuals against intentional infliction of bodily or mental injury. It obliges State officials not only to abstain from inflicting unjustifiable bodily or mental injury, but also to take appropriate measures in response to death threats against persons, and more generally to protect individuals from foreseeable threats to life or bodily integrity coming from any governmental or private actors (CCPR/C/GC/35, para. 9). While State and non-State actors bear almost equal direct responsibility for attacks on the security of lawyers, States bear an additional responsibility if they fail to guarantee their security or to instigate a prompt and effective investigation into allegations of serious human rights violations against them.

71. The right to life guaranteed by article 6 of the International Covenant on Civil and Political Rights, including the right to protection of life under article 6(1), overlaps with the right to security of person set out in article 9(1). The Special Rapporteur took action in a number of cases where lawyers had been killed by State

[28] For example cases: A/HRC/22/67, VEN 3/2012 and ARE 7/2012; A/HRC/24/21, ZWE 2/2013; A/HRC/27/72, SWZ 1/2014; A/HRC/30/27, SWZ 1/2015; and A/HRC/31/79, VEN 8/2015.

or non-State actors as a consequence of their work.[29] In other cases, she addressed communications to States concerning death threats addressed to lawyers.

72. Over the years since the establishment of the mandate, the Special Rapporteur has received a significant number of communications alleging physical attacks against lawyers, as well as harassment, intimidation and threats to their physical integrity, coming both from State officials as well as from private or unknown actors, including criminal organizations. The Special Rapporteur has also addressed communications to States in cases where family members of a lawyer had been assaulted or threatened.

73. International human rights law requires States to take measures both to prevent future injuries and to address past injuries suffered by legal professionals, including the enforcement of criminal laws. States must respond appropriately to patterns of violence against lawyers, prevent and redress attacks against lawyers and adopt all appropriate measures to protect members of the legal profession from abuses perpetrated by private actors.

D. Organization of the legal profession

1. Admission to the legal profession

74. Strict, clear and transparent admission procedures for the practice of law are fundamental in order to ensure the quality of the legal services and representation provided by lawyers. Such procedures also contribute to maintaining the integrity of the profession and its credibility both among the general public and within State institutions, including the judiciary. There are different systems for admission to the legal profession throughout the world, and the level of involvement of the legal profession in those systems can vary dramatically from one country to another. In some jurisdictions, the acquisition of a licence to practice law is entrusted to the bar association, whereas in other places licences are issued by a governmental institution, such as the Ministry of Justice or another relevant ministry, or by the Supreme Court of Justice.

75. The Special Rapporteur has often expressed concerns about situations where the entry into or continued practice within the legal profession is conditioned or controlled by the executive branch.[30] This concern is compounded in countries where lawyers have to periodically renew their licence to practice, in some cases every year. State authorities too often use their control over the licencing of lawyers to prevent certain persons from entering the legal profession or to exclude lawyers who they deem to be "problematic" (these lawyers are often those who take human rights cases or other sensitive cases such as police abuse, corruption or terrorism-related cases).

76. The Special Rapporteur is of the opinion that licensing systems managed by State institutions are against international standards on the independence of the legal profession. The legal profession is best placed to determine admission

[29] See for example: A/HRC/21/49, HND 3/2012; A/HRC/24/21, GTM 2/2013; A/HRC/25/74, COL 10/2013; A/HRC/31/79, IRQ 3/2015; and A/HRC/32/53, TUR 4/2015 and VEN 2/2016.

[30] See A/64/181, paras. 31-39, and country visit reports: A/HRC/29/26/Add.2, para. 77; A/HRC/29/26/Add.1, para. 80; A/HRC/26/32/Add.1, paras. 77 and 78; A/HRC/23/43/Add.3, para. 88; A/HRC/23/43/Add.1, paras. 91 and 92; and A/HRC/20/19/Add.3, para. 66.

requirements and procedures, and it should be responsible both for the administration of examinations and other requirements and for the granting of professional licences.

77. Admission to the legal profession should be stipulated in law and should be transparent and objective. Bar associations should have the delegated power to authorize the practice of law. In addition, there should be a procedure whereby, if necessary, admission decisions may be reviewed by an independent court of law. States should ensure that there is no interference on any grounds, especially political or other opinion-related grounds, in such admission processes.

Non-discrimination

78. The Basic Principles clearly prohibit discrimination with respect to the entry into or continued practice within the legal profession on any grounds, with the exception that a requirement "that a lawyer must be a national of the country concerned" shall not be considered discriminatory (Principle 10). The Basic Principles also stipulate that Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination (Principle 11).

79. In this context, the Special Rapporteur wishes to underline the importance of actively promoting the representation of different minorities in the legal profession. Women should be part of the legal profession; equality and legitimacy require so. Such efforts must start at the level of education; if women and other groups are not given adequate opportunities to gain secondary and university education, other measures will be rendered ineffective. Only a legal profession that is representative of the composition of society will be in a position to ensure legal services that answer the needs of all sectors of society.

2. The role of bar associations

80. Basic Principles 23 and 24 provide that lawyers, like other citizens, have the right to freely associate and, in particular, that they are entitled to "form and join self-governing professional associations to represent their interests, promote their continuing education and training, and protect their professional integrity".

81. The right to freedom of association, also enshrined in article 22 of the International Covenant on Civil and Political Rights, is an essential requirement for the proper and independent functioning of the legal profession and must be guaranteed by law. Laws restricting the creation and work of associations are therefore of great concern to the Special Rapporteur as these can be used to restrict the freedom of association of lawyers and, consequently, their independence.

82. Professional associations of lawyers have a fundamental part to play in promoting and protecting the independence and the integrity of the legal profession and safeguarding the professional interests of lawyers. In its preamble, the Basic Principles recognize, in particular, the vital role that bar associations play in "upholding professional standards and ethics", as well as in "protecting their members from persecution and improper restrictions and infringements". Bar associations also share with Governments the responsibility to "ensure that

everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics" (Principle 25).

83. The latter provision has long been interpreted as meaning that the authorities shall support the establishment and work of professional associations of lawyers without interfering in their work or functioning (A/64/181, para. 21). The independence of bar associations is also indirectly referred to in Principle 24 of the Basic Principles, which states that the "executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference". For the Special Rapporteur, a self-governing and independent bar association is key to the protection of the rule of law and human rights.

84. For a bar association to fulfil its role within society, it must be recognized in law so that its status, objectives and functions are clear to all. Its recognition in law also ensures that its duties and responsibilities can be enforced before the courts, if necessary.

85. The aims and objectives of bar associations should be clearly set out in the legislation governing their establishment and in their constituting documents. A bar association should be able to make its own decisions, following clear and transparent structures and procedures, to represent its members' interests and to sustain itself. Bar associations should foster democratic standards and should also enforce them internally. There must be clear governance and leadership structures in place, and voting and other procedures must be published and open to the scrutiny of the association's membership. In other words, the requirements of democracy should be observed within bar associations and should be applied in their external activities.

86. A bar association should not act as a part of a bureaucratic apparatus allowing for government control of the legal profession, but should operate as a professional association, working to protect the rights of its members and, in so doing, fostering the rule of law. Situations where the State, in particular the executive branch, controls all or part of a bar association, or its governing body, and where membership in such an organization is compulsory, are clearly incompatible with the principle of the independence of the legal profession. While instances of States blatantly closing down bar associations are rare, the Special Rapporteur is concerned about instances where State authorities control the bar or attempt to take control over it by adopting legal amendments or decrees, placing lawyers favourable to the government in the governing bodies or using direct or indirect threats, pressure or intimidation. Treaty bodies have also expressed concern over situations where lawyers are compelled to be members of a State-controlled professional association of lawyers.[31]

87. The Special Rapporteur is extremely concerned about the situation of lawyers in countries where no independent bar association exists. Without the protection provided by an independent bar association, lawyers are extremely vulnerable to attack and to restrictions on their independence, especially from State authorities. Even worse, in places where bar associations are controlled by the State, lawyers often become the target of attacks from the very organizations that should be protecting them. Such attacks most often take the form of groundless or arbitrary

[31] See CAT/C/AZE/CO/4, para. 16; A/56/44, para. 45 (g); and CCPR/C/79/Add.86, para. 14.

suspension to practice or disbarment, and are frequently accompanied by further restrictions, including arbitrary detention and prosecution. Silencing and/or controlling bar associations not only poses great risks to the legal community, but also has far-reaching consequences as it erodes the rule of law and the ability of ordinary people to defend their human rights.

88. Since the inception of the mandate, successive Special Rapporteurs have consistently recommended the establishment of an independent professional association of lawyers where it was lacking,[32] and denounced attacks and any other interference with the independent functioning of bar associations.

3. Legal education and training, including on human rights

89. Quality legal education and training for lawyers are essential so that they may be properly equipped to represent their clients independently, adequately, effectively and in full compliance with their ethical duties. Governments as well as professional associations of lawyers and educational institutions have a responsibility to "ensure that lawyers receive appropriate education and training" and are "made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law" (Principle 9).

90. Lawyers need wide and comprehensive access to continuing legal training. Adequate training opportunities are essential to enable lawyers to keep abreast of legislative developments and new technologies and to acquire specialized knowledge, thereby improving the quality of the services they provide. The provision of quality training in professional ethics is particularly important in light of the implementation of codes of conduct in the legal field.

91. Lawyers also have a duty and responsibility to "uphold human rights and fundamental freedoms recognized by national and international law" (Principle 14). In this vein, legal education and training should also include the study of international human rights law, which would provide lawyers with the understanding to interpret and apply international human rights law at the domestic level, as well as to make use of international mechanisms, including regional mechanisms, for the protection of human rights.

E. Ethics, accountability and disciplinary measures

92. The Basic Principles contain a number of references to the ethical duties of lawyers and professional codes of conduct. Principle 9 requires Governments, professional associations of lawyers and educational institutions to ensure that lawyers have appropriate education and training and be "made aware of the ideals and ethical duties of the lawyer". Principle 14, under "duties and responsibilities", provides that "in protecting the rights of their clients and in promoting the cause of justice", lawyers "shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession". Principle 16 (c), under "guarantees for the functioning of lawyers", states that Governments shall ensure that lawyers will be protected from prosecution or administrative, economic or other sanctions "for any action taken in accordance with recognized professional duties, standards and ethics". In addition, Principle 26 provides that "codes of

[32] See A/HRC/29/26/Add.1; A/HRC/29/26/Add.2; and A/HRC/23/43/Add.3.

professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms".

93. The aim of professional codes of conduct is to ensure that lawyers, in the discharge of their professional functions, act in accordance with predefined ethical standards and the duties and responsibilities intrinsic to their functions.

94. An important factor in the independence of the legal profession is the establishment of an independent system for the consideration of disciplinary proceedings for alleged violations of the rules of professional ethics. The rules for the conduct of disciplinary proceedings against lawyers are set forth in Principles 27 to 29. The main objective of these provisions is to ensure a proper balance between independence of the legal profession and accountability for the breach of ethics and professional standards.

95. Under Principle 27, "charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice". Under Principle 28, "disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review". Under Principle 29, "all disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized ethical standards of the legal profession and in the light of these principles" (see also A/64/181, paras. 55-58).

96. Disbarment, which consists in taking away a lawyer's licence to practice law, possibly for life, constitutes the ultimate sanction for the most serious violations of the code of ethics and professional standards. In many countries, lawyers often face the threat of disbarment. Such threats may be aimed at undermining the independence of a lawyer, at intimidating a lawyer to prevent the discharge of professional duties or at carrying out an act of reprisal for activities a lawyer may have carried out in the legitimate exercise of his or her professional responsibilities. The Special Rapporteur wishes to stress that disbarment should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer.

IV. Recommendations

97. The following recommendations should be interpreted as complementing the recommendations contained in the reports drafted by previous mandate holders,[33] and not as derogating from them in any way.

98. States should honour their legal duties and their political commitments in the field of justice.

99. States should adopt domestic legislation that recognizes the vital and important role played by lawyers in upholding the rule of law and promoting

[33] See, in particular, A/64/181 and A/HRC/23/43.

and protecting human rights, in particular access to justice, the right to an effective remedy and the right to due process of law and a fair trial.

100. States should take positive and proactive measures to protect the independence of lawyers and ensure that they are in a position to discharge their professional functions without intervention or interference of any sort, including from non-State actors. In so doing, they should take effective measures to implement the Basic Principles on the Role of Lawyers and other norms and standards relating to the independence and functions of lawyers in law and practice. Any attacks or interference of any sort against lawyers should be diligently and independently investigated and perpetrators should be prosecuted and sanctioned.

101. States should acknowledge, respect and protect the status of lawyers who promote and defend human rights as human rights defenders.

102. States should take effective measures to ensure the right to access to justice for all individuals under their jurisdiction. This should include, inter alia, adequately regulating the pro bono participation of lawyers in cases where claimants cannot afford private counsel.

103. States should ensure the right of access to a lawyer of one's own choosing for all, in particular anyone who is arrested, detained or imprisoned. In detention cases, the right of access to a lawyer should be recognized from the moment of arrest or detention.

104. States should not identify lawyers with their clients or their clients' causes; they should be proactive in taking measures aimed at preventing the occurrence of such identification.

105. States should respect and protect the privileged lawyer-client relationship, in particular, they should respect and protect the confidentiality of all documents, communications, messages and other information concerning clients, as well as all the devices and places where such information can be found, including protection from illegal searches and seizures.

106. States should review and amend or refrain from adopting legal provisions, in particular in counter-terrorism or national security-related legislation, that encroach on the independence of lawyers and the free exercise of their functions. Furthermore, legislation related to surveillance should stipulate that State surveillance of communications shall only occur under the most exceptional circumstances and exclusively under the supervision of an independent judicial authority.

107. States should enable lawyers to have access to their clients without delays and unnecessary burdens, especially in detention settings.

108. All State institutions, including the judiciary, should respect and protect the right of lawyers to freedom of opinion and expression, including with regard to activities not undertaken in the context of the representation of clients, such as academic research for participation in legislative drafting processes.

109. The content, scope and behaviours associated with contempt of court charges should be clearly defined and identified in legislation. An adequate

procedure should be set up to deal with such cases. Contempt of court charges should only be used to prevent interference in the administration of justice, never as a tool to hinder criticism of judicial organs.

110. The admission to the legal profession should be stipulated in law and admission procedures should be clear, transparent and objective. States should refrain from interfering in admission processes and bar associations should exercise direct authority over admission procedures and the granting of licences to practice.

111. States and bar associations should ensure that anyone can enter the legal profession without discrimination, and special measures should be taken to ensure the representation of women and minorities, including by facilitating their adequate access to secondary and university education.

112. Bar associations should be independent and self-governing professional associations of lawyers, set up to promote and protect the independence and the integrity of lawyers and to safeguard their professional interests. Their status and important functions should be recognized and supported by States, which should refrain from interfering in their work and functioning.

113. States should avoid any participation in the functioning of bar associations, which should be professional, independent and provide for the protection and the accountability of lawyers.

114. The role and the capacity of national bar associations should be enhanced to protect their membership, especially in cases of harassment and undue interference with professional work.

115. States and bar associations should ensure that the quality of the legal education and training of lawyers is appropriate, and that lawyers have access to opportunities for continuing legal education, including in international and regional human rights law.

116. Bar associations should adopt comprehensive codes of ethics and should establish independent and impartial bodies in charge of disciplinary proceedings, which should provide for all guarantees of fairness and due process.

117. International associations of lawyers, together with international non-governmental organizations, should build networks to act in coordination and solidarity to defend and protect lawyers from attacks.

118. States should provide more information relating to lawyers in their universal periodic review and treaty body reports.